

\*\*E-Filed 2/6/09\*\*

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

DAISY QUESADA,

Plaintiff,

v.

NDEX WEST, LLC, et al.,

Defendants.

Case Number C 08-5668 JF (HRL)

ORDER VACATING MOTION TO  
DISMISS AS MOOT

[re: doc. no. 5]

Plaintiff filed the complaint in the instant action on October 29, 2008 in the Santa Clara Superior Court. Defendants removed the action on December 18, 2008, and filed a motion to dismiss on December 29, 2008. Plaintiff filed an amended complaint on January 30, 2009.

Pursuant to Federal Rule of Civil Procedure 15(a), “[a] party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served.” A motion to dismiss does not constitute a responsive pleading within the meaning of Rule 15(a); Plaintiff thus does not need leave of court to file an amended complaint. *See Crum v. Circus Circus Enterprises*, 231 F.3d 1129, 1130 n.3 (9th Cir. 2000). Accordingly, the pending motion to dismiss will be vacated as moot.

**ORDER**

Defendants' motion to dismiss filed December 29, 2008 is VACATED AS MOOT.

DATED: 2/6/09

  
JEREMY FOGEL  
United States District Judge

1 This Order was served on the following persons:

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3 John M. Sorich jsorich@adorno.com

4 Reuben Lagbao Nocos rlnocos@nocoslaw.com

5 Sung-Min Christopher Yoo cyoo@adorno.com, vdelgado@asands.com  
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